

BEFORE THE IOWA BOARD OF EDUCATIONAL EXAMINERS

IN THE MATTER OF PETITION)	Waiver Request No. 20-01
FOR WAIVER BY)	
)	ORDER
Michal South)	
)	

Pursuant to Iowa Code section 17A.9A and 282 Iowa Administrative Code [IAC] chapter 6, the Iowa Board of Educational Examiners [the Board] issues the following ruling on Michal South's Petition for Waiver.

Course of Proceedings

1. On January 6, 2020, the Board received a Petition from Michal South requesting a waiver of the rule for the substitute authorization. See 282 IAC 22.2(272).
2. The Board considered the Petition and supporting documentation at its meeting on January 16, 2020.

Findings of Fact

3. South holds a bachelor's degree from Northland International University, which is not a regionally accredited institution.
4. South has successfully completed the substitute authorization course, and has experience working as a substitute paraeducator.

Summary of Law

5. The Iowa Board of Educational Examiners has exclusive statutory authority to license educational practitioners, to establish criteria for the licenses, and to determine whether an applicant is qualified to perform the duties required by a given license. Iowa Code § 272.2(1).
6. The Iowa Board of Educational Examiners shall "[e]stablish standards for the determination of whether an applicant is qualified to perform the duties required for a given license." Iowa Code § 272.2(9).
7. The Board has enacted administrative rules establishing the standards for issuance of practitioner licenses, which incorporate the requirements set forth in Code Chapter 272. See 282 IAC ch. 22. These rules include the following provision:

Rule Citation:

282—22.2 (272) Substitute authorization.

....

(2) Degree or certificate. Applicants must have achieved at least one of the following:

1. Hold a baccalaureate degree from a regionally accredited institution.
8. The Board may in its sole discretion issue an order waiving in whole or in part the requirements of a rule only if the Board finds, based upon clear and convincing evidence, all of the following:
 - a. The application of the rule would pose an undue hardship on the person for whom the waiver is requested;
 - b. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;
 - c. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and
 - d. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

282 IAC.6.4

9. The Board's rules provide that "the burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the Board should exercise its discretion to grant a waiver from a rule." 282 IAC 6.10(2).

Analysis of Criteria for Waiver

10. Undue hardship: Based on the limited authority granted by the substitute authorization and South's successful experience working with children, the Board finds it would create an undue hardship if it were to deny South's request to waive the requirement of a bachelor's degree from a regionally accredited institution.

11. Prejudice to the rights of others: The Board has granted waivers in similar cases, including:

- 10-28: waiver for substitute authorization granted; petitioner attended Nebraska Christian College, accredited by Association of Biblical Higher Education.
- 11-01: waiver for substitute authorization granted; petitioner attended Zion Bible College, accredited by Association of Biblical Higher Education.

- 11-26: waiver for substitute authorization granted; petitioner attended Columbia Southern University, an accredited member of the Distance Education and Training Council.
- 12-03: waiver for substitute authorization granted; petitioner attended Barclay College, accredited by Association of Biblical Higher Education.
- 18-01: waiver for substitute authorization granted; petitioner attended Northland International University, accredited by the Transnational Association of Christian Colleges and Schools.

In light of this precedent, the Board found granting the waiver would not cause prejudice to the substantial legal rights of any person.

12. Statutory mandate: Iowa Code chapter 272 vests the Board with discretion to establish criteria for the issuance of licenses. Iowa Code § 272.2(1). Pursuant to this discretion, the Board has promulgated rules and standards for licensure. The rule from which South seeks a waiver is not specifically mandated by statute or any other provision of law, and, accordingly, may be waived by the Board.

13. Protection of public health, safety, and welfare: The substitute authorization carries limited authority, as the holder cannot serve for extended periods of time in one assignment. The Board finds that South has presented clear and convincing evidence that waiving the rule in question to grant this authorization would not compromise public health, safety, or welfare.

ORDER

Based upon all of the above considerations, the Board concludes that the Petitioner, Michal South, has met the criteria for granting of a waiver from the rules regarding the substitute authorization, contained in 282 IAC ch. 22. The Petition for Waiver is GRANTED.

Dated this 16th day of January, 2020.

Dr. Ann Lebo, Executive Director
On behalf of the Board